IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20030 of 2001

Between:

Sara Indra Prasad s/o Kishan Lal,

Aged about 29 years, Kalal (BC-B) Caste,

Narayankhed –502286, Medak District

..... PETITIONER

AND

1. The General Manager, Telecom (BSNL),

(former Telecom District Manager),

Sangareddy-502050,

2. The Presiding Officer, Labour Court-II,

4th Floor, Chandra Vihar, Hyderabad-500 001.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly a writ in the nature of Certiorari, calling for the records relating to the impugned Award in ID No. 112 of 2000 (Annexure P-1) dated

4.6.2001 on the file of the 2nd respondent-Labour Court-II, 4th Floor, Chandra Vihar, Hyderabad-5001 and to quash the same declaring at the same time that the petitioner is entitled to absorption as regular Telephone Operating Assistant (Operative) or as Telecom Operating Assistant (General) (or Office Assistant) in case TOA (Operative) (i.e. erstwhile Telephone Operator) has become a dying cadre and consequently to direct the 1st respondent-Employer (under BSNL) so as to absorb the petitioner as per the declaration besides awarding exemplary costs besides fees of the petitioner's Advocates.

Counsel for the Petitioner: MR.C.SURYANARAYANA

Counsel for the Respondent NO.2: GP FOR LABOUR

Counsel for the Respondent NO: Mr. T.Harinath Reddy

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 20030 of 2001

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O R D E R:

Challenging the award in I.D. No. 112 of 2000 dated 4.6.2001 on the file of the 2nd respondent-Labour Court-II, Hyderabad, the present writ petition is filed.

The brief facts that are necessary for the disposal of this case are as follows:

During the period from 31.1.1989 to 31.1.90 the petitioner was employed as SDTO, some times continuously and sometimes in two spells of 4 hours each depending on requirements of service. He filed O.A. 230 of 1994 before the Central Administrative Tribunal, Hyderabad Bench for appointment as regular full time TO. Thereafter he also filed O.A. 1604 of 1995. The suppression of material by the respondents led to denial of justice to him though he is entitled to absorption as regular Telephone Operator. The orders passed in the said O.As. are not based on merit but were made in ignorance of the

facts which were suppressed in the reply statements filed in the O.As. He was the lone Short Duty TO entitled to absorption as regular TO or converted as Clerk, re-designated as TOA (General). Hence the present writ petition.

Learned counsel for the petitioner submitted written arguments, inter alia, contending that since the petitioner was employed continuously for more that 7 hours a day like other regular telephone operators and further he was having requisite qualifications, the Labour Court ought to have directed for absorption of the petitioner. Even though the Central Administrative Tribunal directed the respondents to consider the absorption of the workmen, the said finding is not a res judicata; that the findings are absolutely baseless and perverse and the result of non-application of mind and therefore he prays to set aside the same.

On the other hand, learned counsel for the respondents contended that since the order in O.A. 230 of 1994 on the file of the Central Administrative Tribunal dated 2.3.1994 has become final and as per the Rules the mode of appointment of telephone operator is by way of notification and when the appointment can be made without reference to the Employment Exchange, then the offer has to be made to the applicant before offering it to the freshers. Another O.A. was also filed by the petitioner to consider his case for appointment and therefore the order in O.A. 230 of 1994 is made applicable and the findings in the O.As. come in the way of the petitioner as res judicata. He further contended that the services of the petitioner were terminated as a result of non-renewal of contract of employment which is not a retrenchment under Section 2(oo) of the Industrial Disputes Act and therefore the order of the Tribunal does not suffer from any incurable legal infirmities so as to call for interference by this Court.

The scope of judicial review can be exercised by this court when there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter

disregard to the provisions of the law and a grave injustice or grave failure of justice has occasioned thereby. A dispute is raised before the Labour Court under Section 2(a)(2) of the I.D. Act for declaring the termination of his services by the respondent therein as illegal and to direct the respondent to reinstate him into service with continuity of service and full back wages. The case of the petitioner is that he was employed as part-time telephone operator at Narayankhed for one year from 31.1.1989 to 30.1.1990 and his services were orally terminated on 30.1.1990. Since the appointment of the petitioner as Short Duty Telephone Operator (SDTO) who was employed for more than four hours per day is deemed to be an employee of SDTO but not as a Part-time telephone operator, he filed an application to regularize his services as Part-time telephone operator. When his case was not considered, he filed O.A. 230 of 1994 before the Central Administrative Tribunal wherein it was observed by the Tribunal that the petitioner has to be offered before offering to the freshers. As the said direction was ignored, the petitioner again filed O.A. 1604 of 1995 wherein it was directed that the petitioner can be posted in short-term vacancies if the conditions are fulfilled. The Labour Court having framed two points, namely, whether the petition is maintainable and whether the termination of services of the petitioner amounts to retrenchment, on the first point held that the case of the petitioner is barred by principles of res judicata. The principles of res judicata may not be applicable to the present facts of the case because the issue has not been settled finally.

Under Section 11 of the Code of Civil Procedure, no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The prayer in the first O.A. i.e. O.A. 230 of 1994 on the file of Central Administrative Tribunal, Hyderabad is to

consider the case of the petitioner for appointment to the post of telephone operator, whereas the prayer in another O.A. i.e. O.A. 1604 of 1995 is also the same. However, the dispute raised in the Labour Court is with regard to termination of his services. Therefore, the finding of the Labour Court that the I.D. is barred by principles of res judicata is not sustainable as the relief sought for in the Central Administrative Tribunal and the decision thereon and the relief sought for in the Industrial Dispute are entirely different.

Coming to the second point as to whether the alleged termination of the petitioner is retrenchment within the meaning of Section 2(oo) of the I.D. Act, as per Section 2(oo) termination does not include termination of service of the workman as a result of non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf. The specific case of the petitioner is that he was appointed as full-time telephone operator from 30.1.1989 to 31.1.1990 but as seen from the pleadings, he was appointed as Short Duty Telephone Operator under a scheme of employment of SDTO introduced under the authority of Presidential Order. The petitioner has not produced his appointment order before the Tribunal so as to come to the conclusion that the appointment of the petitioner was a contract appointment or as a part-time telephone operator. Since the petitioner worked for one year only, it can be inferred that he must have been appointed on a contract basis. After the expiry of one year, he was directed not to come to the office, that is to say, orally. The experience certificate filed by the petitioner which is marked as Ex.W-2 would go to show that he was appointed as a Part-time telephone operator for a period of one year. The terms and conditions of the appointment order have not been filed into the court. Since he worked for about one year and thereafter his period was not renewed, the oral termination cannot be said to be retrenchment within the meaning of Section 2(oo) of the I.D. Act. By placing reliance on Section 2(oo) of the I.D. Act, the Labour Court properly interpreted the provisions of law and came to the conclusion

that the termination of the petitioner does not amount to retrenchment. Since the findings recorded by the Labour Court are completely in accordance with the provisions of the Act, the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court.

The writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --06—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The General Manager, Telecom (BSNL),

(former Telecom District Manager),

Sangareddy-502050,

2. The Presiding Officer, Labour Court-II,

4th Floor, Chandra Vihar, Hyderabad-500 001.

3. Two C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad (OUT).

4. CD copies.